It is clear from the prosecution evidence that accused, when the goods were deposited, volunteered to O.D.O. 330 the information that the declaration was not correct and he would hand in a correct declaration next morning. This was before P.O.D.O. 853 took a hand in the proceedings.

It is admitted that accused was quite frank about the declaration, that it was impossible to pay duty that night and that it would be the height of folly to make a false declaration when he knew the goods would be examined next day.

In my view there is a reasonable ground to suppose that the declaration in question was made primarily to clear the goods from Singapore and enable them to be deposited in Johore pending payment of duty: there is prosecution evidence that accused volunteered the information on entry and before any suspicion arose that the declaration was not correct, and this, if accepted, at once dissipates any idea of evasion of customs duty as it puts the Customs at once on enquiry.

The preparation of a false declaration is not conclusive evidence of an intention to use it for an improper purpose, and, if there is a reasonable explanation of all the circumstances, such explanation must be accepted.

For these reasons I am of opinion that there is a reasonable doubt as to intention of the accused to evade payment of full or part duty on the goods and that he should be given the benefit of the doubt.

The appeal is allowed and conviction and sentence quashed. The goods will be returned to appellant after the proper duty as assessable on 25-7-47 is paid.

Appeal Allowed.

CHENG KEE HUAT AND ANOR. v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Russell, J.) December 13, 1947]

Opium and Chandu Proclamation Ss. 3, 7 and 17 — Forfeiture of property of completely innocent person — Sentence on a subsidiary charge should be concurrent with sentence on main charge.

In this case the first appellant was the owner of the motor car in which opium was found and the second appellant was the driver.. The opium was found concealed in a box which had been screwed to the underpart of the chassis. Both the appellants were originally charged (a) with importing chandu into the Malay Peninsula contrary to S. 7 of the Opium and Chandu Proclamation and (b) with having in their possession in the car opium contrary to S. 3 of the Proclamation. The first appellant was acquitted on both charges but he appealed against the order of the District Judge forfeiting the motor car to the Customs. The second appellant pleaded guilty and was sentenced to three years r.i. on the first charge and 9 months r.i. on the second charge, the sentences to run consecutively. He appealed against the severity of the sentence.

Held, (1) that where a motor car the property of a completely innocent person is being used in connection with an offence of which no knowledge can be attributed to such person, then an order should not be made under S. 17 of the Opium and Chandu Proclamation confiscating such motor car; (2) that where an accused is sentenced on a main charge and on a subsidiary charge the sentences should be made concurrent.

CRIMINAL APPEAL.

Hastings for the Appellant.

C. H. Whitton (Crown Counsel) for the Respondent.

Russell, J. : — In this appeal the first and second appellants were charged firstly, with importing opium into the Malay Peninsula contrary to section 7 of the Opium and Chandu Proclamation and, secondly, with having in their possession in car S.7165 opium contrary to section 3 of the same Proclamation.

The first appellant was acquitted and discharged on both charges but appeals against the order of the learned District Judge forfeiting the above-mentioned motor-car to the Customs. The first appellant was the owner of the motor-car and the second appellant was his driver and the opium was found concealed in a box which had been screwed to the under part of the chassis. It was not disputed that the learned District Judge had a discretion to order the forfeiture of the car under section 17 of the Proclamation as it had been used in connection with an offence under the Proclamation but I do not think he exercised his discretion in a judicial manner. His reasons for doing so appear to have been two, firstly, that he considered that the first appellant had failed in his duty as a citizen to prevent the importation of this drug into the open market and, secondly, that its confiscation would act as a deterrent.

The first appellant was found to be completely innocent on both charges and no knowledge that his car was being used in connection with an offence concerning opium can be attributed to him. I do not see in what way he failed in any duty nor do I consider that the forfeiture of the property of a completely innocent person can act as a deterrent to wrong-doers. I therefore ordered the order of forfeiture to be quashed.

The second appellant pleaded guilty to both charges and appealed only as to sentence. The sentence of three years was not to my mind excessive considering all the circumstances of the case but the sentence of nine months was imposed upon a subsidiary charge to the main one and for that reason I ordered it to run concurrently with the sentence of three years which was imposed on the main charge and not consecutively as ordered by the learned District Judge.

Order Accordingly.